



DATA PROTECTION BILL & RIGHT TO PRIVACY

by Mr. Deepak Gangwar

JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR

UGC Approved Under 2(f) & 12(b) | NAAC Accredited | Recognized by Statutory Councils

Printed by :
JAYOTI PUBLICATION DESK

Published by :
Women University Press
Jayoti Vidyapeeth Women's University, Jaipur

Faculty of Law & Governance

Title: DATA PTOTECION BILL & RIGHT TO PRIVACY

Author NameMs. Radha Gupta

Published By: Women University Press

Publisher's Address: Jayoti Vidyapeeth Women's University, Jaipur
Vedaant Gyan Valley,
Village-Jharna, Mahala Jobner Link Road, NH-8
Jaipur Ajmer Express Way,
Jaipur-303122, Rajasthan (INDIA)

Printer's Detail: Jayoti Publication Desk

Edition Detail: I

ISBN: 978-93-90892-58-7

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Acknowledgement to Idea Originator:

I am respectfully thankful to JV'n Dr. Panckaj Garg for providing me an opportunity to do the Proposed project work at Jayoti Vidhyapeeth Women's University, Jaipur and giving us all support and guidance.

Idea Originator: JV'n Dr. Panckaj Garg

Introduction:

This Governmental Project mainly focuses on the emergence of data surveillance by the government and private bodies in new age India and how it is simultaneously breaching our privacy and violating the fundamental rights guaranteed by our Constitution and affecting the lives of innocent citizens who are unaware of the data hoarding. This project mainly analysis the various controversies related to data privacy in recent times like the introduction of AADHAR Bill and how it can lead towards a totalitarian state which can manipulate citizens for their own advantage with unauthorized and unformed selling of data to private bodies in the name of development and growth without taking to citizens' consent in mind.

The biggest irony of the situation is the justification of the government of illegally selling of data of citizens without their consent or knowledge claiming it to be totally legal and a crucial step for the development of our country which will benefit our economy.

The 2019 Bill is broadly based on the principles of the General Data Protection Regulation, 2016 (the "GDPR") and the landmark judgment of the Supreme Court of India: *Justice K.S. Puttaswamy (Retd.) & Anr v Union of India*,¹ wherein right to privacy was upheld as a fundamental right under the Indian Constitution.

Objectives of the work:

The Project aims at examining the data protection bill 2019 with special reference to right to privacy provided in our Constitution and also the following facts-

- Though Indian Constitution doesn't explicitly guarantee 'Right to Privacy' as a fundamental right, the Supreme Court had ruled in August 2017 that right to privacy is a fundamental right under Article 21 of the Constitution.
- India does not have a data protection Act or a data protection agency as of now in spite of various attempts in that direction by the Government.
- India is nearing towards its first ever Data Protection enactment with introduction of the Personal Data Protection Bill in Parliament during December 2019.

Material and Methods/Methodology:

The Researcher has adopted the doctrinal mode of research methodology consisting of secondary sources such as Books, Bare Acts and Web Resources for this project.

Correlation with Ancient India Literature:

Over the last two decades, the issue of privacy – in particular, the collection, processing and sharing of personal data of individuals – has become increasingly prominent in India. This is the period which saw the advent and flourishing of various internet based businesses in India which are dealing with the collection, organisation, and processing of personal information, whether directly, or as a critical component of their business model. As has been noted by the Supreme Court in *Puttaswamy case*; "Uber, the world's largest taxi company, owns no vehicles. Facebook – the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory; and 'Airbnb', the world's largest accommodation provider, owns no real estate. This period saw various efforts by the Indian Government which is based on the understanding that online service delivery is a powerful vehicle for achieving policy objectives. The implementation of the project for unique biometric identification (Aadhaar), NATGRID, CCTNS, e-governance systems and the Aadhaar Act etc., are some of significant steps of the Government in that direction. In spite of such increased collection of information of citizens by the Government, other institutions and service providers; India is yet to have an omnibus data protection law.

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2. *Facebook CEO Mark Zuckerberg testifies before US Congress: Highlights*, The Economic Times (11/04/2018) available at <https://economictimes.indiatimes.com/tech/internet/facebook-ceo-mark-zuckerberg-testifies-before-us-congress-highlights/articleshow/63704337.cms?from=mdr>, last accessed on 02.05.2020 at 2:36 p.m.
3. Justice K.S. Puttuswamy v. Union of India , (2017) 10 SCC 641
4. Personal Data Protection Bill, 2019
5. M.P Sharma v. Satish Chandra, 1954 SCR 1077
6. The Code of Criminal Procedure (Act V of 1898) was in force at the relevant point of time.
7. When this matter was decided, Right to Property was a fundamental right under Article 19(1)(f) of the Constitution which was later omitted by the 44th Amendment to Constitution in 1978.
8. Kharak Singh v. State of Uttar Pradesh, 1964 SCR (1) 332.
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(Only Speed Post is Received at University Campus Address, No. any Courier Facility is available at Campus Address)

Pages : 4
Book Price : ₹ 150/-



Year of Publication- 2021